

## ADEQ HB2007 and HB2586 Budget Reconciliation Fee Authority Exempt Rulemakings Response to Comments

### Scope

The Arizona Department of Environmental Quality (ADEQ) is authorized pursuant to Laws 2010, 7th Special Session, Chapter 7, section 5 (HB2007) as amended by Laws 2010, Second Regular Session, Chapter 290, section 2 (HB2586) to “increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011.” Further, “[m]onies received from fees pursuant to this section are appropriated to [ADEQ].” Between fiscal year 2010 and fiscal year 2011 the ADEQ general fund allocation was reduced by \$5.7 million. By implication, the one-time fee authority of \$5.7 million is intended to replace ADEQ’s general fund reduction. The Department will use revenues from the fee increases to replace the general fund shortfall as allowed by both HB2007 and HB2586.

### Process

The authority granted to ADEQ in HB2007 for a one time fee increase required the Department to submit for legislative consideration a specific fee plan by April 1, 2010. Two weeks after HB2007 became law, ADEQ developed and submitted its plan - on time. HB2586, which amends HB2007, passed out of the legislature on April 28, 2010, and became law on May 10, 2010. Both HB2007 and HB2586 require that the increased fees be collected and used for services in FY2011, which begins on July 1, 2010. As a result, time was short for ADEQ to draft and publish notice of these fees for an effective date of July 1. However, ADEQ has worked hard to inform stakeholders and the public of these fee increases and to seek their input.

In addition to the plan ADEQ submitted on April 1, 2010, which described ADEQ’s intentions for increasing fees, on May 7, 2010, ADEQ notified stakeholders of the proposed fee increases both in a general notice published in the Arizona Administrative Register and publication of the proposed rule language on the agency Web site. The Department also provided final notice of the fee rules by publication of Notices of Exempt Rulemaking in the Arizona Administrative Register on May 21, 2010 (ADEQ’s Web site was updated simultaneously with links to the published rule language). These public notices went beyond the 30 day notice period required by HB2586. Although no

response to comments is required by HB2007 as amended by HB2586, ADEQ is providing this response to further clarify the fee rules, and to describe two modifications to the rules, as discussed below. All other fees will be finalized as proposed. Additional fee-specific clarifications requested in comments on the rule will be included with the invoices sent to those paying the increased fees.

Modifications to R18-13-2701. Special Waste Management Fees for Fiscal Year 2011:

In accordance with HB2586, ADEQ has made every effort to ensure that the fees will be fairly and equally assessed to all parties for services rendered and assessed in a non-discriminatory manner against both public and private parties. ADEQ received a large number of comments from a diverse group of government, business and industry associations regarding the one-time increase of special waste fees from two dollars to ten dollars per ton and the cap from \$20,000 to \$100,000. In light of these comments, and to ensure that the fees are fairly and equally assessed to all parties for services rendered, ADEQ has reduced the proposed increase in special waste fees from ten dollars per ton to five dollars per ton, and reduced the proposed increase in the cap from \$100,000 to \$50,000 per generator site per year.

Modifications to R18-14-108. Water Protection Fees for Fiscal Year 2011:

Water Quality rule R18-14-108 is modified to correct a typographical error in Table 2 under “General Permits”, specifically “Gravity Sewer Only with Manholes” and “Force Mains Including Gravity Sewer Components.”

Table 2.

Gravity Sewer Only with Manholes

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- Serving 301 or more connections \$1000 \$3000

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Force Mains Including Gravity Sewer Components.

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- Serving 301 or more connections \$1000 \$3600

Further, the Department is clarifying that the discount fees for each additional facility at the same site for Type 2 and Type 3 permits, under R18-14-102(C)(6)(c) will continue to apply. The only provisions affected by the exempt rulemaking are those rule provisions specifically superseded in the new R18-14-108.

Pursuant to fee authority granted the agency under HB2007 and HB2586, the exempt rulemaking and the modifications to R18-13-2701 and R18-14-108 described above will be effective July 1, 2010. The agency will publish new Notices of Exempt Rulemaking reflecting the modifications described above, both on the agency's Web site and in the Arizona Administrative Register.